



TENNESSEE ARTS COMMISSION

SOLICITATION # 31625.10110

PROFESSIONAL SERVICE SOLICITATION FOR ARTS ACCESS GRANT PROGRAM EVALUATION

1. INTRODUCTION

The state intends to award a contract for review and evaluation of the TN Arts Commission Arts Access grant program and its panel-adjudicated grantees.

2. SCOPE OF SERVICE, CONTRACT PERIOD, TERMS AND CONDITIONS

The *Pro Forma* Contract (Solicitation Attachment 1) represents the contract document that the contractor selected by the state must sign.

3. PROCUREMENT SCHEDULE

The state reserves the right, at its sole discretion, to adjust the procurement schedule as necessary. The following table represents the best estimate of the schedule that will be followed.

EVENT	TIME (central time)	DATE
1. State Issues Solicitation		August 10, 2009
2. RESPONSE DEADLINE	2:00 p.m.	August 26, 2009
3. State Identifies Responsive & Responsible Solicitation Responses		August 28, 2009
4. State Identifies the Best, Responsive & Responsible Cost Offer		August 31, 2009
5. State Releases Award Notification	2:00 p.m.	September 1, 2009
6. Contract Signing		September 10, 2009
7. Contractor Signature Deadline	2:00 p.m.	September 11, 2009
The state reserves the right, at its sole discretion, to amend or cancel this solicitation at any time.		

4. RESPONSE REQUIREMENTS

An offer in response to this solicitation must consist of two parts, *Qualifications Evidence* (including any supporting documentation) and *Cost Offer*, exactly as specified below.

4.1. Qualifications Evidence. The Qualification Evidence and supporting documentation must detail responses or provide documentation as required to address each of the following requirements (of the potential contractor or potential contractor's employees as applicable):

- Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the contact person regarding the offer.
- Submit a *Statement of Certifications and Assurances* document (Solicitation Attachment 2) completed and signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract. The document must be signed without exception or qualification.

- c. Provide a statement, based upon reasonable inquiry, of whether the Offeror or any individual who shall perform work under a contract resulting from this solicitation has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.
- d. Provide three positive letters of reference from organizations with whom the Offeror has previously contracted to provide service comparable to that required by the attached *pro forma* contract. "Positive" is defined as inclusion of a statement to the effect that the work was performed to the satisfaction of the organization providing the reference.
- e. Provide a written description indicating the extent to which the Offeror or any individual who shall perform work under a contract resulting from this solicitation has experience providing the required or similar services detailed in the attached *pro forma* contract.
- f. Provide a written description indicating the extent to which the Offeror or any individual who shall perform work under a contract resulting from this solicitation has professional experience with one or more arts organizations having a principle emphasis on ethnic minorities.
- g. Provide a written description of how the Offeror or any individual who shall perform work under a contract resulting from this solicitation will manage and accomplish the service required by the attached *pro forma* contract. The description must address each element of the *pro forma* contract scope of services.

- 4.2. **Cost Offer.** The Cost Offer must be in the form of a completed, exact copy of the *Cost Offer* document (Attachment 3).

NOTICE: The Cost Offer must incorporate ALL costs for services under the contract for the total contract period, and it must record the proposed price of the subject service exactly as required by the Cost Offer document and must NOT record any other rates, amounts, or information.

5. RESPONSE DELIVERY

No later than the response deadline detailed in procurement schedule above, a potential contractor must deliver to the state ALL documentation required for both the *Qualifications Evidence* and the *Cost Offer* components of an offer in response to this solicitation. It must be delivered to:

Lisa Hester, Arts Access Program Director
 Tennessee Arts Commission
 401 Charlotte Avenue
 Nashville, TN 37243
Lisa.Hester@tn.gov

6. EVALUATION PROCESS

A team of at least three procuring agency employees will review the *Qualifications Evidence* and any supporting documentation submitted with each offer. For an offer to be acceptable and eligible for contract award, the evaluators must determine that it documents that the Offeror meets minimum qualifications and requirements specified by the solicitation and is, at least, minimally acceptable as a contractor for the subject services. The procurement coordinator will review the *Cost Offer* submitted by each Offeror deemed acceptable for contract award by evaluators to assess whether it complies, without qualification, with solicitation instructions. The procurement coordinator will identify the responsive, responsible *Cost Offer* indicating the lowest cost to the state. The procuring agency will award the contract to the individual or entity making said offer indicating the lowest cost to the state.

7. GENERAL INFORMATION

- 7.1. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation or in the employment practices of the contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The contractor pursuant to this solicitation shall, upon request, show proof of such

nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 7.2. **Conflict of Interest.** For the purposes of applying these requirements, the state will deem an individual to be an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid. This solicitation shall not result in a contract with:
- an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;
 - a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity); or,
 - a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person.
- 7.3. **Disclosure of Response Contents.** All materials submitted to the state in response to this solicitation become the property of the State of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to the Procurement Schedule), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting a response to this solicitation, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.

**SOLICITATION # 31625-10110
ATTACHMENT 1 -PRO FORMA CONTRACT**

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE ARTS COMMISSION
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Tennessee Arts Commission, hereinafter referred to as the "State" and CONTRACTOR LEGAL ENTITY NAME, hereinafter referred to as the "Contractor," is for the provision of annual review and evaluation of the TN Arts Commission Arts Access grant program and its panel-adjudicated grantees, as further defined in the "SCOPE OF SERVICES."

The Contractor is A/AN INDIVIDUAL, FOR-PROFIT CORPORATION, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY.

Contractor Federal Employer Identification or Social Security Number: ID NUMBER

Contractor Place of Incorporation or Organization: LOCATION

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall annually review and evaluate the Tennessee Arts Commission's administration of the Arts Access program including Arts Access Touring Arts and Arts Access Technical Assistance grant categories, Arts Access Title VI, Americans with Disabilities Act and special project initiatives and administration of Arts Access adjudicated grantees. The final list of grantees to receive reviews will be provided by the TN Arts Commission annually, but is projected to include 12 - 15 organizations.
- A.3. The Contractor shall conduct site visits to review and evaluate Arts Access program adjudicated grantees.
- A.4. The Contractor shall provide for each of five (5) annual reviews: 1) a written review/evaluation of the Tennessee Arts Commission's administration of the Arts Access program; and 2) a written review/evaluation of each adjudicated Arts Access grantee's funded arts program. Each written review/evaluation shall document the organization's administration of the program, its strengths and weaknesses and provide recommendations for improvements as appropriate.
- A.5. The Contractor shall be responsible for reading all materials in preparation for the annual site visits and evaluations, contacting all grantees to schedule site visits, and preparing and submitting written evaluations.
- A.6. The Tennessee Arts Commission will provide the Contractor with copies of the Arts Access program guidelines, adjudicated grantee program applications (with contact information) and final list of programs, special projects, Title VI and ADA materials on an annual basis. The appropriate Tennessee Arts Commission staff will be available for interviews and meetings as needed.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on September 1, 2009 and ending on October 31, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed WRITTEN DOLLAR AMOUNT (\$NUMBER). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
MILESTONE- By September 30, 2009, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$ NUMBER
MILESTONE – By October 31, 2009, Complete site visits, prepare and submit written reports	\$ NUMBER
MILESTONE- By August 15, 2010, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$ NUMBER
MILESTONE – By September 30, 2010, Complete site visits, prepare and submit written reports	\$ NUMBER
MILESTONE- By August 15, 2011, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$ NUMBER
MILESTONE – By September 30, 2011, Complete site visits, prepare and submit written reports	\$ NUMBER
MILESTONE- By August 15, 2012, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$ NUMBER

MILESTONE – By September 30, 2012, Complete site visits, prepare and submit written reports	\$ NUMBER
MILESTONE- By August 15, 2013, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$ NUMBER
MILESTONE – By September 30, 2013, Complete site visits, prepare and submit written reports	\$ NUMBER

- c. A failure by the Contractor to deliver any milestone specified in section C.3.b., above, shall constitute a material breach of contract. Contractor delivery of a milestone after the specified deadline for said service milestone shall result in a reduction of the associated payment rate to One Dollar (\$1.00). Notwithstanding the foregoing, at the sole discretion of the State, the State may remunerate the Contractor for a milestone delivered to the State after the associated deadline in an amount equal to no more than eighty percent (80%) of the payment rate for such milestone.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Arts Commission
401 Charlotte Avenue
Nashville, TN 37243

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Tennessee Arts Commission;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and

- v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the

Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Lisa Hester, Arts Access Program Director
Tennessee Arts Commission
401 Charlotte Avenue
Nashville, TN 37243
Lisa.Hester@tn.gov
Telephone # (615) 532-9797
FAX # (615) 741-8559

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON
CONTRACTOR NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request*

format available from the State and the Internet at:

www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

- E.6. **Confidentiality of Records.** Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. **State Ownership of Work Products.** The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.8. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE ARTS COMMISSION:

RICH BOYD, EXECUTIVE DIRECTOR

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

SOLICITATION # 31625-10110
ATTACHMENT 2 – STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Offeror does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Offeror will provide all services as defined in the of the solicitation's *pro forma* contract scope of services for the total contract period.
2. The Offeror accepts and agrees to all terms and conditions set out in the solicitation's *pro forma* contract.
3. The Offeror acknowledges and agrees that a contract resulting from the solicitation may incorporate, by reference, all information provided in response to the solicitation as a part of the contract.
4. The Offeror will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
5. To the knowledge of the undersigned, the information detailed within the information submitted in response to the solicitation is accurate.
6. The information submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
7. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Offeror in connection with the solicitation or any resulting contract.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the Offeror to any contract awarded pursuant to the solicitation. If the signatory is not the Offeror (if an individual) or the Offeror's President or Chief Executive Officer, this document must attach evidence showing the individual's authority to bind the Offeror.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE INDIVIDUAL OR ENTITY MAKING AN OFFER IN RESPONSE TO THE SUBJECT SOLICITATION

OFFEROR SIGNATURE:

PRINTED NAME & TITLE:

DATE:

OFFEROR LEGAL ENTITY NAME:

OFFEROR FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):

**SOLICITATION # 31625-10110
ATTACHMENT 3 – COST OFFER**

NOTICE: This Cost Offer *MUST* be completed *EXACTLY* as required.

The Cost Offer, detailed below, shall indicate the proposed price for providing all services as defined in the *Pro Forma Contract Scope of Services* for the total contract period.

OFFEROR SIGNATURE:	
PRINTED NAME & TITLE:	
DATE:	
OFFEROR LEGAL ENTITY NAME:	

NOTE: This document must be signed, in the space above, by an individual empowered to bind the Offeror to the provisions of any contract awarded pursuant to this solicitation.

Cost Item Description	Offered Cost	State Use Only
MILESTONE- By September 30, 2009, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$	
MILESTONE – By October 31, 2009, Complete site visits, prepare and submit written reports	\$	
MILESTONE- By August 15, 2010, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$	
MILESTONE – By September 30, 2010, Complete site visits, prepare and submit written reports	\$	
MILESTONE- By August 15, 2011, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$	
MILESTONE – By September 30, 2011, Complete site visits, prepare and submit written reports	\$	
MILESTONE- By August 15, 2012, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$	
MILESTONE – By September 30, 2012, Complete site visits, prepare and submit written reports	\$	
MILESTONE- By August 15, 2013, Complete the review of the program guidelines, adjudicated applications and schedule site visits	\$	

Cost Item Description	Offered Cost	State Use Only
MILESTONE – By September 30, 2013, Complete site visits, prepare and submit written reports	\$	
<p><i>The state will use this sum to determine the Cost Offer reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i></p> <p>Evaluation Cost Amount: (sum of all weighted cost amounts above)</p>		
<p>State Use – Procurement Coordinator Signature, Printed Name and Date:</p>		